

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE NISSAN DEALERSHIP LITIGATION : 17-cv-729 (LGS)
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STIPULATION AND ORDER

WHEREAS on March 29, 2017, Nissan North America, Inc. (“NNA”), filed Amended Counterclaims and Third-Party Complaint in the above-captioned matter (*see* Dkt. Nos. 91 and 92), which was later further amended with leave of this Court at Dkt. Nos. 346 and 347 (collectively the “Amended Complaint”);

WHEREAS Count Six (Possession and Damages) of the Amended Complaint (“Count Six”), was filed against BICOM NY, LLC d/b/a Jaguar Land Rover Manhattan (“BICOM”), as well as other parties ACIM NY, LLC (“ACIM”) and ALIM NY, LLC (“ALIM”);

WHEREAS on April 27, 2017, this Court resolved the issues of possession in Count Six in favor of NNA, but did not determine the amount of damages. *See* Dkt. No. 142;

WHEREAS on July 11, 2017, BICOM filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), which was assigned Case No.: 17-11906 (the “Bankruptcy Case”);

WHEREAS on November 8, 2017, the Bankruptcy Court entered an order modifying the automatic stay pursuant to section 362 of the Bankruptcy Code to, among other things:

allow the claims, defenses, counterclaims or third-party claims that have been asserted against BICOM by NMAC or NNA as of the date of this Order in the District Court Action (the “Existing Claims”), to be determined in the District Court Action and the District Court may determine and enter a final order or judgment as to liability and monetary amounts due and owing on such Existing Claims.

Bankruptcy Case, Dkt. No. 339, ¶ 2;

WHEREAS on May 7, 2019, this Court referred Count Six to the Honorable Robert E. Lehrburger, United States Magistrate Judge for the purpose of quantifying damages related to Count Six (Dkt. No. 587);

WHEREAS on May 24, 2019, the Bankruptcy Court confirmed BICOM's Chapter 11 plan of liquidation (the "Plan"). The Plan went effective on May 28, 2019. The Plan among other things, established a liquidating trust (the "Liquidation Trust"). The Liquidation Trust is now the real party in interest in this action. Craig Jalbert is the Trustee of the Liquidation Trust;

WHEREAS pursuant to the order of referral, NNA provided documentation to BICOM and then subsequently to the Liquidation Trust that NNA alleged supported damages against BICOM in the amount of \$115,395.10. Of that total, NNA alleged that \$78,225.00 is entitled to administrative claim treatment under section 503 of the Bankruptcy Court (the "Alleged Post-Petition Claim"). BICOM objects to the Alleged Post-Petition Claim being treated as an administrative claim and alleges that NNA's full claim for damages under Count Six should be treated as a general unsecured claim against BICOM; and

WHEREAS NNA and the Liquidation Trust wish to resolve certain issues regarding Count Six damages;

NOW, THEREFORE, it is hereby stipulated and agreed by NNA and BICOM, through their undersigned counsel, as follows:

1. Judgment shall be entered in favor of NNA and against BICOM on Count Six in the amount of \$115,395.10; and
2. The issue of whether the Alleged Post-Petition Claim is entitled to treatment as an administrative claim under the Plan shall not be determined herein and NNA and

the Liquidation Trust each fully reserve its rights and claims regarding the treatment of such claim under the Plan. If the parties are unable to resolve such issue at the time funds become available to pay administrative claims pursuant to the terms of the Plan, the issue shall be determined by the Bankruptcy Court.

Dated: November 15, 2019.

Craig Jalbert, solely in his capacity as
Liquidation Trustee for the LIQUIDATION
TRUST

NISSAN NORTH AMERICA, INC.

By his attorneys,

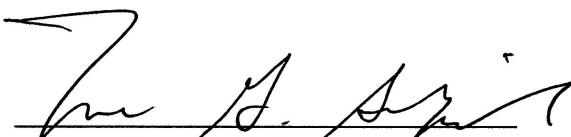

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Dated: November 19, 2019
New York, New York


LORNA G. SCHOFIELD

UNITED STATES DISTRICT JUDGE